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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/314,324	05/19/1999	WILLIAM JOSEPH ARMSTRONG	R0999-023	5010

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EXAMINER

DIXON, THOMAS A

ART UNIT

PAPER NUMBER

3629

DATE MAILED: 02/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/314,324

Applicant(s)

ARMSTRONG ET AL.

Examiner

Thomas A. Dixon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment of 12/23/02.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) 2 and 11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Claims 2 and 11 are cancelled.
2. Applicant's arguments are partially persuasive. Though Duvvoori et al, does not explicitly teach operating systems in the partitions, it does teach emulating an operating system and is seen to be equivalent. Further Claim 1 includes the operating system limitation only in the preamble, and will be given no weight.
3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1, 3-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Duvvoori et al (6,201,438).

As per Claim 1.

Duvvoori et al ('438) discloses :

a) tracking concurrent uses of a computer program across a plurality of logical partitions in the logically partitioned computer, see column 2, lines 25-39, column 4, line 56 – column 5, line 16, column 7, lines 41-53, and column 11, lines 18-54, using a partition manager accessible by the plurality of logical partitions, see column 6, lines 39-55, using a partition manager accessible by the plurality of logical partitions, see column 6, lines 29-55;

b) with a license manager resident in a first logical partition among the plurality of logical partitions, accessing the partition manager in response to a request to use the computer program in the first logical partition, see column 6, line 29 – column 7, line 53, and selectively denying a request to use the computer program in a first logical partition if permitting the requested use would violate a concurrent use software license associated with the computer program, see column 6, lines 58-60, and column 14, lines 25-56.

As per Claim 3.

Duvvoori et al ('438) further discloses maintaining a global count of the number of concurrent uses of the computer program across the plurality of logical partitions, see column 6, line 55 – column 7, line 1 and column 13, lines 19-21.

As per Claim 4.

Duvvoori et al ('438) further discloses receiving the global count from the partition manager in response to the access thereto, and wherein selectively denying the request includes denying the request when the global count is at least equal to the maximum

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number of concurrent uses permitted by the concurrent use software license, see column 6, line 49 – column 7, line 1 and column 13, lines 19-36.

As per Claim 5.

Duvvoori et al ('438) further discloses incrementing and decrementing, see column 13, lines 19-36.

As per Claim 6.

Duvvoori et al ('438) further discloses each logical partition includes a local license manager, and accessing the partition manager in response to the request is performed by the local license manager in the first logical partition, see column 7, lines 26-40.

As per Claim 7.

Duvvoori et al ('438) further discloses incrementing and decrementing and includes passing a program identifier, see column 13, lines 11-36.

As per Claim 8.

Duvvoori et al ('438) further discloses determining whether permitting the requested use would violate the concurrent use software license, see column 13, lines 11-36.

As per Claim 9.

Duvvoori et al ('438) further discloses tracking concurrent uses of a plurality of computer programs across the plurality of logical partitions, see column 13, lines 11-36.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10, 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duvvoori et al (6,201,438).

As per Claim 10.

Duvvoori et al ('438) discloses :

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a) a logically partitioned computer, see column 2, lines 25-39, column 4, line 56 – column 5, line 16, column 7, lines 41-53, and column 11, lines 18-54;

b) a first computer program configured to manage a concurrent use software license for a second program in the computer by tracking concurrent uses of a second program across the plurality of logical partitions, and selectively denying a request to use the second program in a first logical partition if permitting the requested use would violate a concurrent use software license, see column 14, lines 25-56;

i) a partition manager accessible by the plurality of logical partitions and configured to track concurrent uses of the second program across a plurality of logical partitions, see column 13, lines 11-36;

ii) a license manager configured to access the partition manager to request the use of the computer program in the first logical partition, see column 13, lines 11-36.

Duvvoori et al, does not explicitly teach operating systems in the partitions, it does teach emulating an operating system and is seen to be equivalent.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use a real operating system or emulator as a design choice.

As per Claim 12.

Duvvoori et al ('438) further discloses maintaining a global count of the number of concurrent uses of the computer program across the plurality of logical partitions, see column 6, line 55 – column 7, line 1 and column 13, lines 19-21.

As per Claim 13.

Duvvoori et al ('438) further discloses receiving the global count from the partition manager in response to the access thereto, and wherein selectively denying the request includes denying the request when the global count is at least equal to the maximum number of concurrent uses permitted by the concurrent use software license, see column 6, line 49 – column 7, line 1 and column 13, lines 19-36.

As per Claim 14.

Duvvoori et al ('438) further discloses incrementing and decrementing, see column 13, lines 19-36.

As per Claim 15.

Duvvoori et al ('438) further discloses each logical partition includes a local license manager, and accessing the partition manager in response to the request is performed by the local license manager in the first logical partition, see column 7, lines 26-40.

As per Claim 16.

Duvvoori et al ('438) further discloses incrementing and decrementing and includes passing a program identifier, see column 13, lines 11-36.

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As per Claim 17.

Duvvoori et al ('438) further discloses maintaining a global count of the number of concurrent uses of the computer program across the plurality of logical partitions, see column 6, line 55 – column 7, line 1 and column 13, lines 19-21.

As per Claim 18.

Duvvoori et al ('438) discloses:

- a) a plurality of logical partitions, see column 2, lines 25-39, column 4, line 56 – column 5, line 16, column 7, lines 41-53, and column 11, lines 18-54;
- b) a partition manager configured to track concurrent uses of a computer program across the plurality of logical partitions, see column 13, lines 11-36; and
- c) a plurality of license managers, each license manager resident in an associated logical partition among the plurality of logical partitions and each license manager configured to access the partition manager responsive to a request to use the computer program in the associated logical partition, see column 7, lines 25-40.

Duvvoori et al, does not explicitly teach operating systems in the partitions, it does teach emulating an operating system and is seen to be equivalent.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use a real operating system or emulator as a design choice.

As per Claim 19.

- a) a first program configured to manage a concurrent use software license for a second program in a logically partitioned computer, see column 2, lines 25-39, column 4, line 56 – column 5, line 16, column 7, lines 41-53, and column 11, lines 18-54 and column 13, lines 11-36; including

a partition manager accessible by the plurality of logical partitions and configured to track concurrent uses of the second program across a plurality of logical partitions, see column 13, lines 11-36 and column 6, line 29 – column 7, line 53; and

a license manager configured to access the partition manager to request the use of the computer program in the first logical partition, and deny the request to use the second program if permitting the request would violate the concurrent use software license, see column 13, lines 11-36 and column 6, line 29 – column 7, line 53.

- b) a signal bearing medium bearing the first program, see column 2, lines 9-12.

Duvvoori et al, does not explicitly teach operating systems in the partitions, it does teach emulating an operating system and is seen to be equivalent.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use a real operating system or emulator as a design choice.

As per Claim 20.

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Duvvoori et al ('438) further discloses the signal bearing medium includes at least one of a recordable medium and a transmission type medium, see column 2, lines 9-12.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (703) 305-4645. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Thomas A. Dixon", with a stylized flourish at the end.

Thomas A. Dixon  
Examiner  
Art Unit 3629

February 25, 2003